

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE) CAUSE NO. 79C01-0511-PL-00060

STATE OF INDIANA,)

Plaintiff,)

v.)


BRIAN M. BAER, and)
KRISTY M. BLAIR,)

Defendants.)

RECEIVED BY CERTIFIED
MAIL DATED 11/15/05

FILED

NOV 16 2005


Clerk Tippecanoe Circuit Court

**COMPLAINT FOR INJUNCTION, RESTITUTION, COSTS,
CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF**

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. At all times relevant to this Complaint, the Defendants, Brian M. Baer and Kristy M. Blair, were individuals engaged in the sale of items via the Internet residing at 2325 North 22nd Street, Lafayette, Indiana, 46904.

FACTS

3. Since at least November 28, 2004, the Defendants, Brian M. Baer and Kristy M. Blair, have offered items for sale to consumers via the Internet.

A. Allegations Related to Consumer Kimberly Wood's Transaction.

4. On or about November 28, 2004, the Defendants entered into a contract via the Internet with Kimberly Wood ("Wood") of Wooster, Ohio, wherein the Defendants represented they would sell Windows XP Professional with Service Pack 2 software to Wood for Sixty One and 50/100 Dollars (\$61.50), which Wood paid.

5. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants, Brian M. Baer and Kristy M. Blair, are presumed to have represented at the time of the sale they would deliver the software within a reasonable period of time.

6. As of today, the Defendants have yet to either ship the software, or to provide a refund to Wood.

B. Allegations Related to Consumer Craig Staley's Transaction.

7. On or about May 26, 2005, the Defendants entered into a contract via the Internet with Craig Staley ("Staley") of Irving, Texas, wherein the Defendants represented they would sell a 20" Sharp Aquos Television and Wall Mount to Staley for Three Hundred Forty Six and 50/100 Dollars (\$346.50), which Staley paid.

8. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the sale they would deliver the 20" Sharp Aquos Television and Wall Mount to Staley within a reasonable period of time.

9. As of today, the Defendants have yet to either deliver the 20" Sharp Aquos TV and Wall Mount, or to provide a refund to Staley.

COUNT I- VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

10. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 9 above.

11. The transactions referred to in paragraphs 4 and 7 are “consumer transactions” as defined by Ind. Code § 24-5-0.5-2(a)(1).

12. The Defendants are “suppliers” as defined by Ind. Code § 24-5-0.5-2(a)(3).

13. The Defendants’ representation to consumers the consumer transactions had sponsorship, approval, performance, characteristics, accessories, uses, or benefits the Defendants knew or reasonably should have known the transactions did not have, as referenced in paragraphs 4 and 7, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

14. The Defendants’ representations to consumers the Defendants would deliver the items, or otherwise complete the subject matter of the consumer transactions within a reasonable period of time, when the Defendants knew or reasonably should have known they would not, as referenced in paragraphs 5 and 8, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

15. The Defendants’ representations to the consumers they would be able to purchase the items as advertised by the Defendants, when the Defendants did not intend to sell the items as represented, as referenced in paragraphs 4 and 7, are violations of the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(11).

**COUNT II-KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

16. The Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. The misrepresentations and deceptive acts set forth in paragraphs 4, 6, 7, and 9 were committed by the Defendants with the knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendants, Brian M. Baer and Kristy M. Blair, for a permanent injunction pursuant to Ind. Code § 24-5-0.5-4(c)(1), enjoining the Defendants from the following:

- a. representing expressly or by implication the subject of a consumer transaction has sponsorship, approval, characteristics, accessories, uses, or benefits it does not have which the Defendants know or should reasonably know it does not have;
- b. representing expressly or by implication the Defendants are able to deliver or complete the subject of the consumer transaction within a reasonable period of time, when the Defendants know or reasonably should know they cannot; and
- c. representing expressly or by implication a consumer will be able to purchase the subject of a consumer transaction as advertised by the Defendants, if the Defendants do not intend to sell it.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendants, Brian M. Baer and Kristy M. Blair, for the following relief:

- a. cancellation of the Defendants' unlawful contracts with all consumers, including but not limited to the persons identified in paragraphs 4 and 7, pursuant to Ind. Code § 24-5-0.5-4(d).
- b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), for reimbursement of all unlawfully obtained funds remitted by consumers for the

purchase of items from the Defendants, including but not limited to the persons identified in paragraphs 4 and 7, in an amount to be determined at trial;

c. costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

d. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g) for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Thousand Dollars (\$5,000.00) per violation, payable to the State of Indiana;

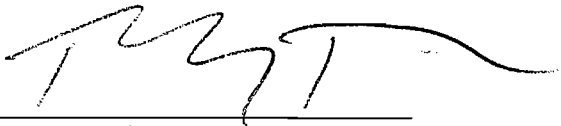
e. on Count II of the Plaintiff's complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8 for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. all other just and proper relief.

Respectfully Submitted,

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By:


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